LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 18 1967
JOHN F. DAVIS, CLERK

NO. 283

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

APPENDIX A

ACCOMPANYING THE MOTION THAT THE REVIEW OF THE PETITION FOR WRIT OF CERTIORARI BE DELAYED

DONALD F. KNOX
Petitioner

vs.

THE STATE OF OHIO
Respondent

Donald F. Knox
127 W. Northwood Ave.
Columbus, Ohio

Petitioner

IN THE COURT OF APPEALS, FRANKLIN COUNTY, OHIO

In the Matter of the
Appeal of Donald F. Knox :
from a Decision of the : Case No. 8298
State Personnel Board of :
Review

A MOTION THAT THE DECISIONS OF THE LOWER COURTS BE REVIEWED

PRESENTED UPON THE SECOND APPEAL TO THE COURT OF APPEALS

Donald F. Knox
127 W. Northwood Ave.
Columbus, Ohio

Appellant

William B. Saxbe
Attorney General
State of Ohio

Robert M. Zitko
Assistant Attorney General
State House Annex
Columbus, Ohio

Attorneys for Appellee

TABLE OF CONTENTS

	Pages
Motion	1
Memorandum in Support of the Motion	1
Conclusion	3
Footnote	4
Certificate of Service	5

INDEX TO AUTHORITIES

Matter of the Appeal of John L. Crabtree et al. from a Decision of the State Personnel Board of Review (Court of Appeals No. 8430-35; Supreme Court of Ohio No. 40749-54)	2
State, ex rel. Bingham v. Riley, County Eng., 6 Ohio St. 2d 263 (1966)	1

MOTION

The appellant, Donald F. Knox, now comes before this court for the second time in the matter of his appeal from a decision of the State Personnel Board of Review. The appellant requests that this court review the decisions rendered in this case by the Board and the Franklin County Common Pleas Court.

MEMORANDUM IN SUPPORT OF THE MOTION

The bases for the above motion are as follows. 1) The case is still within its appeal time since a Petition for Writ of Certiorari has been filed with the Supreme Court of the United States and will be acted upon early in the October Term, 1967. 2) The appellant was denied the right to have presented before the Supreme Court of Ohio, in his earlier motion to certify, several instances of denial of federal constitutional rights due to an error in judgment on the part of his former attorney, John A. Brown, who had been specifically informed of the appellant's intention to proceed to the Supreme Court of the United States if necessary. 3) This appeal cannot be brought before the Franklin County Common Pleas Court since that court rendered an adverse decision pertaining to the substantive question in the case against which this appeal contains a complaint.

The remaining bases for the motion support the appellant's contention that this court is no longer bound by its adverse decision rendered on May 3, 1966 upon the appellant's first appeal. First of all, the decision of the Supreme Court of Ohio on June 15, 1966 in the case of State, ex rel. Bingham v. Riley, County Eng. 6 Ohio St. 2d 263 did in effect overrule the decision of

this court in appellant's case. The Supreme Court of Ohio, upon an appeal by the appellants, decided that the earlier order of the State Personnel Board of Review was res judicata and thus not subject to the collateral attack that the appellee had brought against said order of the Board. As a result, the decision of the Board which returned several unclassified employees to their jobs was allowed to stand. Thus the Supreme Court of Ohio did, in effect, affirm the right of an unclassified employee to appeal to the Board on the question of his unclassified status and thus did, in effect, overrule the decision of the Court of Appeals in the appellant's case.

The second basis for appellant's contention that this court is no longer bound by its earlier decision in this case is the decision by this court on December 13, 1966 in the Matter of the Appeal of John L. Crabtree et al. from a Decision of the State Personnel Board of Review. By remanding that appeal to the Board, this court did directly affirm the right of an unclassified employee to appeal to the Board on the question of his unclassified status. Furthermore, said decision did overrule this court's decision in appellant's case wherein the appellant was denied such a right.[1] The Supreme Court of Ohio overruled the appellee's motion to certify in the Crabtree case on May 17, 1967 and thus allowed the earlier decision of this court to stand. By such action the Supreme Court of Ohio did, in effect, also affirm such a right of an unclassified employee as it had done in the Bingham case. Also, the Supreme Court of Ohio by its action in the Crabtree case did, in effect, overrule the decision of the Court of Appeals in appellant's case.

Regarding 2) above, the matter of the failure of the appellant's former attorney to present to the Su-

preme Court of Ohio the instances of denial of federal constitutional rights is examined under the separate cover entitled Instances of Denial of Federal Constitutional Rights, pages 2-3 and 10-15 inclusive, with reference therein being made to the accompanying Affidavit. The former attorney should have either acted in accordance with the expressed objective of the appellant or withdrawn from the case, but he did neither for several months until such a withdrawal finally took place under unusual circumstances. The latter action and other unusual actions on the part of the former attorney are described on pages 5, 11, and 14-18 under the separate cover cited above.

The appellant maintains that this failure by Mr. Brown was not due to an error since he is very knowledgeable and experienced. Mr. Brown simply made a decision concerning the future of the case which was not his to make and which was in conflict with the appellant's decision to appeal to the Supreme Court of the United States if necessary.

The decisions of the State Personnel Board of Review and the Common Pleas Court still stand, and it is to those decisions that the appellant directs the attention of the court. With regard to those decisions there were certain unusual actions by the Board and the Assistant Attorney General that should be noted. Such actions are described in the Instances of Denial of Federal Constitutional Rights: relative to the Board see pages 4-6; relative to the Assistant Attorney General see pages 13-16 and footnote 3, p. 18.

CONCLUSION

The appellant requests that this court review the instances of denial of federal constitutional rights which

were not presented to the Supreme Court of Ohio by Mr. Brown. As a result of that failure, the appellant contends that he has a right in terms of basic principles of justice to appeal for a second time to the courts of Ohio in order to seek a remedy for the deficiency described above.

Respectfully submitted,

Donald F. Knox
Appellant

FOOTNOTE

[1]The decision of the Court of Appeals in the Crabtree case contains certain sentences which are not clear to the appellant. Such a matter is of critical importance to the ultimate disposition of appellant's case, and for that reason the appellant offers the court an examination of this matter in the Motion that the Court Receive an Examination of the Identical Aspects of the Knox and Crabtree cases. The latter motion also has immediate relevance to an erroneous statement in the appellee's Memorandum Contra Motion for Rehearing to the Supreme Court of Ohio in the Knox case. (See Instances of Denial of Federal Constitutional Rights, p. 15.)

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion was mailed to Robert M. Zitko, Assistant Attorney General, State House Annex, Columbus, Ohio, on the __ day of September, 1967.

Donald F. Knox
Appellant

I certify that a copy of the foregoing motion was mailed to John A. Brown, Attorney at Law, 42 East Gay Street, Columbus, Ohio, on the ___ day of September, 1967.

Donald F. Knox
Appellant